

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GREAT BOWERY INC., d/b/a
TRUNK ARCHIVE

Plaintiff,

v.

VOX MEDIA LLC and DOES 1
through 10, inclusive.

Defendant(s).

Case No. 1:23-cv-10726 _____

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, Trunk Archive alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, *et seq.*

2. This court has personal jurisdiction over Defendant(s)' because Defendant(s)' actions alleged herein occurred in the state of New York, were directed towards a resident of the state of New York, Defendant(s) caused injury to Plaintiff within the state of New York, and Defendant(s) have a physical presence in the state of New York.

3. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)-(d) and/or 28 U.S.C. § 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred, Defendant(s) reside in or

can be found in this district, Defendant(s) conduct regular and substantial business in this district and/or is a corporate defendant whose contacts with this district are sufficient to subject it the personal jurisdiction of this Court.

PARTIES

4. Plaintiff Great Bowery, Inc. d/b/a Trunk Archive is a Delaware corporation, duly organized by law with a principal place of business in New York. Defendant Vox Media LLC (“Vox Media”) is a Delaware limited liability company whose principal place of business is located at 85 Broad St, New York City, NY 10004. Vox Media has one or more offices and employees in New York, has conducted regular and substantial business throughout New York including this judicial district, and has transacted business with many individuals or businesses residing throughout New York including this judicial district.

5. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and, on that basis, alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained.

FACTUAL ALLEGATIONS

6. Plaintiff Trunk Archive is full service photography licensing agency representing some of the most prominent photographers and iconic images in the world.

7. Trunk Archive's catalogue features imagery from hundreds of prominent artists and designers that are available for license.

8. One of Trunk Archive's most prominent artists is American portrait photographer Annie Leibovitz ("Leibovitz").

9. Leibovitz is one of the world's best known and most accomplished portrait photographers. She is primarily known for her celebrity portraiture and her work has been featured on numerous album covers and magazines.

10. Her work has been exhibited in prominent galleries and museums, including the Smithsonian Institute's National Portrait Gallery in Washington, DC.

11. In 1972, Leibovitz photographed President Richard Nixon's helicopter leaving the white house ("Nixon Photograph") that was later featured in the book *ANNIE LEIBOVITZ AT WORK* ("Leibovitz Book")..

12. Leibovitz registered the Nixon Photograph with the United States Copyright Office as part of the Leibovitz Book under registration number TX 691-5667.

13. A true and correct copy of the Nixon Photograph is attached hereto as Exhibit A.

14. In 1987, Leibovitz photographed artist Keith Haring in his Greenwich Village studio (“Haring Photograph”) that was later featured in the Leibovitz book.

15. Leibovitz registered the Haring Photograph with the United States Copyright Office as part of the Leibovitz Book under registration number TX 691-5667.

16. A true and correct copy of the Haring Photograph is attached hereto as Exhibit B.

17. In 1980, Leibovitz photographed an image of Yoko Ono and John Lennon (“Yoko and Lennon Photograph”) that was first published as the cover of the January 1981 issue of *Rolling Stone Magazine*.

18. Leibovitz registered the Yoko and Lennon Photograph with the United States Copyright Office under registration number VA 1-718-255.

19. Attached hereto as Exhibit C is a true and correct copy of the Yoko and Lennon Photograph.

20. Leibovitz photographed images of her partner, writer Susan Sontag, (“Sontag Photographs”) that were first published in her photograph compilation book “A Photographer’s Life 1990-2005”, which was published in 2006.

21. Leibovitz registered the Sontag Photographs with the United States Copyright Office under registration number VA 1-367-169.

22. Attached hereto as Exhibit D is a true and correct copy of the Sontag Photograph.

23. In 1990, Leibovitz photographed dancer Mikhail Baryshnikov and Rob Besserer (“Dancer Photograph”) that was later featured in the Leibovitz book.

24. Leibovitz registered the Dancer Photograph with the United States Copyright Office as part of the Leibovitz Book under registration number TX 691-5667.

25. A true and correct copy of the Dancer Photograph is attached hereto as Exhibit E.

26. Leibovitz photographed an image of a Las Vegas showgirl (“Showgirl Photograph”) that was published in her 1999 photograph compilation book “Women”.

27. Leibovitz registered the Showgirl Photograph with the United States Copyright Office under registration number VA 1-041-276.

28. A true and correct copy of the Showgirl Photograph is attached hereto as Exhibit F.

29. In 2011, Leibovitz photographed an image of Abraham Lincoln’s gloves (“Glove Photograph”) as part of her “Pilgrimage” project.

30. Leibovitz registered the Glove Photograph with the United States Copyright Office under VA 1-806-155.

31. A true and correct copy of the Glove Photograph is attached hereto as Exhibit G.

32. In 2011, Leibovitz photographed an image of writer Maurice Sendak (“Sendak Photograph”), which was featured in the July 2011 issue of *Vanity Fair* magazine.

33. Leibovitz registered the Sendak Photograph with the United States Copyright Office under registration VA 1-820-590.

34. A true and correct copy of the Sendak Photograph is attached hereto as Exhibit H.

35. In 2012, Leibovitz photographed members of Team USA (“Team USA Photographs”) for the cover and a featured article in the June 2012 issue of *Vogue Magazine*.

36. Leibovitz registered the Team USA Photographs with the United States Copyright Office under VA 1-886-831.

37. A true and correct copy of the Team USA Photographs is attached hereto as Exhibit I.

38. In 2014, Annie Leibovitz was invited to the set of *Star Wars Episode VII* where she was granted exclusive access to photograph images of the cast and crew of *Star Wars Episode VII* for the June 2015 issue of *Vanity Fair Magazine*.

39. In June 2015, Leibovitz’ photographed images of the cast and crew of *Star Wars Episode VII*, which included a photograph of actor Oscar Isaac and of actor Adam Driver, and were published in *Vanity Fair Magazine* (the “Episode VII

Photographs”) with a “VF” watermark at the bottom corner and the caption “PHOTOGRAPH BY ANNIE LEIBOVITZ” for each photograph. *See* <https://www.vanityfair.com/hollywood/photos/2015/05/star-wars-the-force-awakens-photos-annie-leibovitz>.

40. Leibovitz registered the Episode VII Photographs with the United States Copyright Office under registration certificate VA 2-056-929.

41. A true and correct copy of the Episode VII Photographs are attached hereto as Exhibit J.

42. In 2013, Leibovitz photographed an image of singer Katy Perry (“Perry Photograph”) that were first published online by *Vogue Magazine* on June 20, 2013 as part of the July 2013 cover shoot for *Vogue Magazine*. *See* <https://www.vogue.com/article/beauty-and-the-beat-katy-perrys-first-vogue-cover>.

43. The Perry Photograph as published by *Vogue Magazine* contained a “Vogue” watermark at the bottom right hand corner of the image.

44. Leibovitz registered the Perry Photograph with the United States Copyright Office under registration number VA 1-950-469.

45. A true and correct copy of the Perry Photograph is attached hereto as Exhibit K.

46. In 2015, Leibovitz photographed an image of Sophie Hunter getting fitted for her wedding gown (“Hunter Photograph”).

47. Leibovitz registered the Hunter Photograph with the United States Copyright Office under registration VA 2-056-930.

48. A true and correct copy of the Hunter Photograph is attached hereto as Exhibit L.

49. In 2014, Leibovitz photographed an image of Kim Kardashian and Kanye West (“Kardashian Photograph”) that was first published online by *Vogue Magazine* in March 2014 as part of the April 2014 issue of *Vogue Magazine*. See <https://www.vogue.com/slideshow/kim-and-kanye-april-photos>.

50. Leibovitz registered the Kardashian Photograph with the United States Copyright Office under VA 2-005-269.

51. A true and correct copy of the Kardashian Photograph is attached hereto as Exhibit M.

52. In 2009, Leibovitz photographed an image of model Kate Moss (“Moss Photograph”) for the July 2009 issue of *Vogue Magazine*.

53. Leibovitz registered the Moss Photograph with the United States Copyright Office under VA 1-720-876.

54. A true and correct copy of the Moss Photograph is attached hereto as Exhibit N.

55. In 2016, Leibovitz photographed an image of Queen Elizabeth II and Prince Philip (“Royal Couple Photograph”) for the Summer 2016 issue of *Vanity*

Fair Magazine.

56. Leibovitz registered the Royal Couple Photograph with the United States Copyright Office under VA 1-250-366.

57. A true and correct copy of the Royal Couple Photograph is attached hereto as Exhibit O.

58. In 2015, Leibovitz photographed an image of the Jolie-Pitt family (“Jolie-Pitt Photograph”) for the November 2015 Issue of *Vogue Magazine*.

59. Leibovitz registered the Jolie-Pitt Photograph with the United States Copyright Office under registration VA 2-056-930.

60. A true and correct copy of the Jolie-Pitt Photograph is attached hereto as Exhibit P.

61. In 2014, Leibovitz photographed an image of Amal Alamuddin in her wedding dress (“Alamuddin Photograph”) for the October 2014 issue of *Vogue Magazine*.

62. Leibovitz registered the Alamuddin Photograph with the United States Copyright Office under registration VA 2-005-269.

63. A true and correct copy of the Alamuddin Photograph is attached hereto as Exhibit Q.

64. The Nixon Photograph, Haring Photograph, Yoko and Lennon Photograph, Sontag Photographs, Dancer Photograph, Showgirl Photograph, Glove Photograph,

Sendak Photograph, Team USA Photographs, Episode VII Photographs, Perry Photograph, Hunter Photograph, Kardashian Photograph, Moss Photograph, Royal Couple Photograph, Jolie-Pitt Photograph, and Alamuddin Photograph will collectively be referred to as the “Photographs”.

65. Leibovitz subsequently granted Trunk Archive the exclusive right to license the Photographs.

66. Defendant Vox Media is and was at all relevant times the owner and operator of the website www.racked.com (“Racked Website”).

67. According to the Racked Website, Racked was a style and retail website that promoted affiliate brands products, with Vox Media often receiving commissions for products purchased via affiliate links. *See* <https://www.racked.com/shopping>.

68. As of 2018, the Racked Website no longer publishes new content, however, the Racked Website still contains active online advertisements placements. *Id.*

69. On or about July 7, 2023, Trunk Archive discovered the Nixon Photograph, Haring Photograph, Yoko and Lennon Photograph, Sontag Photographs, Dancer Photograph, Showgirl Photograph, Glove Photograph, and the Sendak Photograph published to the Racked Website in an article titled “Annie Leibovitz on Nine Assignments that Shaped Her Career”.

70. On or about July 12, 2023, Trunk Archive discovered the Team USA

Photographs published to the Racked Website in an article titled “Whatever Happened to Ryan Lochte’s Clothing Line?”.

71.Trunk Archive has never at any point given Vox Media a license or other permission to display, distribute or otherwise use the Nixon Photograph, Haring Photograph, Yoko and Lennon Photograph, Sontag Photographs, Dancer Photograph, Showgirl Photograph, Glove Photograph, Sendak Photograph, and the Team USA Photographs in the articles on the Racked Website (“Racked Infringement”).

72. True and correct copies of the photographs as used in the Racked Infringement are attached hereto as Exhibit R.

73. Defendant Vox Media is and was at all relevant times the owner and operator of the website www.theverge.com (“Verge Website”).

74.According to the Verge Website, Verge is a technology, science, and entertainment publication with a website that includes advertising placements and an online store. *See* <https://www.theverge.com>.

75.On or about July 12, 2023, Trunk Archive discovered the Episode VII Photographs published to the Verge Website in articles titled “Oscar Isaac will star as Hamlet this summer at the Public Theater”, “Star Wars: Episode IX is getting a new writer” and “Why is @EmoKyloRen so perfect”.

76.On or about July 12, 2023, Trunk Archive discovered the Perry Photograph

published to the Verge Website in an article titled “Get real: Kay Perry letgs go of the teenage dream with ‘Prism’”.

77.Trunk Archive has never at any point given Vox Media a license or other permission to display, distribute or otherwise use the Episode VII Photographs or the Perry Photograph in the articles on the Verge Website (“Verge Infringement”).

78.True and correct copies of the photographs as used in the Verge Infringement are attached hereto as Exhibit S.

79.Defendant Vox Media is and was at all relevant times the owner and operator of the website www.popsugar.com (“Popsugar Website”).

80.According to the Popsugar Website, Popsugar is an entertainment, fashion, beauty and wellness website that directly promotes various brands and products to its users. See <https://www.popsugar.com/>.

81.On or about August 28, 2022, Trunk Archive discovered the Hunter Photograph published to the Popsugar Website in an article titled “Sophie Hunter’s Valentino Dress Was Inspired by Unicorns”.

82. On or about August 28, 2022, Trunk Archive discovered the Kardashian Photograph published to the Popsugar Website in an article titled “Kendall Jenner is Morphing Into Kim Kardashian”.

83. On or about August 28, 2022, Trunk Archive discovered the Moss Photograph published to the Popsugar Website in an article titled “The Bride Wore

White – A Look Back at Kate Moss’s Best White Dress Moments”.

84. On or about August 28, 2022, Trunk Archive discovered the Royal Couple Photograph published to the Popsugar Website in two articles titled “Look Back on Prince Phillip and Queen Elizabeth II’s 71-Year Marriage in Pictures” and “The Surprising Way Queen Elizabeth II is Related to Husband Prince Phillip”.

85. On or about August 28, 2022, Trunk Archive discovered the Jolie-Pitt Photograph published to the Popsugar Website in an article titled “The Sweetest Moments the Jolie-Pitt Kids Have Shared With Their Parents”.

86. On or about September 18, 2023, Trunk Archive discovered the Alamuddin Photograph published to the Popsugar Website in an article titled, “Freak Out – You Can Buy Amal Alamuddin’s Wedding Gown”.

87. Trunk Archive has never at any point given Vox Media a license or other permission to display, distribute or otherwise use the Hunter Photograph, Kardashian Photograph, Moss Photograph, Royal Couple Photograph, Jolie-Pitt Photograph, and Alamuddin Photograph in the articles on the Popsugar Website (“Popsugar Infringement”).

88. True and correct copies of the photographs as used in the Popsugar Infringement are attached hereto as Exhibit T.

89. The Racked Website, the Verge Website, and the Popsugar Website will collectively be referred to as “Defendant’s Websites”.

90. The “Racked Infringement, the Verge Infringement, and the Popsugar Infringement” will collectively be referred to as the “Infringing Posts”.

91. On information and belief, Defendant’s Websites generates content that promotes its products, services, and to attract user traffic to Defendant’s Websites to generate business and ad revenue for the company.

92. At all relevant times, the Defendant’s Websites were readily accessible to the general public throughout New York, the United States, and the world.

93. Trunk Archive has never at any point given Vox Media a license or other permission to display, distribute or otherwise use the Photographs in the Infringing Posts on Defendant’s Websites or on any other website or platform.

94. On information and belief, Vox Media (including its employees, agents, contractors or others over whom it has responsibility and control) copied and uploaded the Photographs to the Defendant’s Websites without Trunk Archive’s consent or authorization.

95. On information and belief, Defendant’s use of the Photographs in the Infringing Posts was deliberate and willful because it knew or should have known that it did not purchase a license to use the Photographs on Defendant’s Websites.

CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 .S.C. § 101 *et seq.*

96. Plaintiff incorporates by reference all of the above paragraphs of this

Complaint as though fully stated herein.

97. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of the unique and original Photographs.

98. Plaintiff is informed and believes and thereon alleges that the Defendant(s) willfully infringed upon the copyrighted Photographs in violation of Title 17 of the U.S. Code, in that it used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Photographs without Plaintiff's consent or authority, by using it in the Infringing Posts on Defendant's Websites.

99. As a result of Defendant(s)' violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000 pursuant to 17 U.S.C. § 504(c).

100. As a result of the Defendant(s)' violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendant(s).

101. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant(s) as follows:

a) For a finding that Defendant(s) infringed Plaintiff's copyright interest in the

Photographs by copying and displaying it for commercial purposes without a license or consent;

b) For an award of actual damages and disgorgement of all of Defendant(s)' profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant(s) in an amount up to \$150,000 for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;

c) For an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant(s) from any infringing use of any of Plaintiff's copyrighted works;

d) For costs of litigation and reasonable attorney's fees against Defendant(s) pursuant to 17 U.S.C. § 505;

e) For pre- and post-judgment interests as permitted by law; and

f) For any other relief the Court deems just and proper.

DATED: December 8, 2023

Respectfully submitted,

s/ Taryn Rose Murray
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DEMAND FOR JURY TRIAL

Plaintiff Trunk Archive, hereby demands a trial by jury in the above matter.

DATED: December 8, 2023

Respectfully submitted,

s/ Taryn Rose Murray

Taryn Rose Murray, Esq.

SDNY #5888896

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